

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDWARD KENNEDY,
Petitioner,
vs.
BEN CURRY, Warden,
Respondent.)
No. C 08-1090 JSW (PR)
ORDER TO SHOW CAUSE

INTRODUCTION

Petitioner, a prisoner of the State of California, currently incarcerated at Correctional Training Facility in Soledad, California, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the decision by the California Board of Parole Hearings (“Board”) to deny Petitioner parole. Petitioner’s application for leave to proceed in forma pauperis is GRANTED.¹ This order directs Respondent to show cause why the petition should not be granted.

BACKGROUND

According to the petition, Petitioner was convicted of second degree murder in Los Angeles County Superior Court and, in 1986, the trial court sentenced him to a term of 15

¹The application to proceed in forma pauperis is attached to the original petition, which was filed in the Central District of California before this case was transferred to this Court.

1 years-to-life in state prison. The Board found petitioner unsuitable for parole. Petitioner
 2 challenged this decision unsuccessfully in all three levels of the California courts, and
 3 thereafter filed the instant petition for a writ of habeas corpus.²

4 **DISCUSSION**

5 I **Standard of Review**

6 This court may entertain a petition for a writ of habeas corpus “in behalf of a
 7 person in custody pursuant to the judgment of a State court only on the ground that he is
 8 in custody in violation of the Constitution or laws or treaties of the United States.” 28
 9 U.S.C. § 2254(a).

10 It shall “award the writ or issue an order directing the respondent to show cause
 11 why the writ should not be granted, unless it appears from the application that the
 12 applicant or person detained is not entitled thereto.” *Id.* § 2243.

13 II **Legal Claims**

14 Petitioner alleges that the Board’s decision violated his right to due process
 15 because it was not supported by sufficient evidence and because it relied on “unchanging
 16 factors.”. Liberally construed, the allegations are sufficient to warrant a response from
 17 Respondent. *See Board of Pardons v. Allen*, 482 U.S. 369 (1987); *see, e.g., Morales v.*
 18 *California Dep’t of Corrections*, 16 F.3d 1001, 1005 (9th Cir. 1994), *rev’d on other*
 19 *grounds*, 514 U.S. 499 (1995).

20 **CONCLUSION**

21 For the foregoing reasons and for good cause shown,

22 1. The Clerk shall serve by certified mail a copy of this order and the petition, and
 23 all attachments thereto, on Respondent and Respondent’s attorney, the Attorney General
 24 of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

25
 26
 27 ²A previous federal petition, No. 06-0831 JSW, which is currently pending, challenges a
 previous Board decision to deny parole.

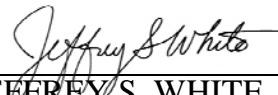
1 2. Respondent shall file with the Court and serve on Petitioner, within **sixty (60)**
2 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the
3 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should
4 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all
5 portions of the state trial record that have been transcribed previously and that are relevant
6 to a determination of the issues presented by the petition. If Petitioner wishes to respond
7 to the answer, he shall do so by filing a traverse with the Court and serving it on
8 Respondent within **thirty (30)** days of his receipt of the answer.

9 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an
10 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing
11 Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court
12 and serve on Respondent an opposition or statement of non-opposition within **thirty (30)**
13 days of receipt of the motion, and Respondent shall file with the Court and serve on
14 Petitioner a reply within **fifteen (15)** days of receipt of any opposition.

15 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep
16 the Court informed of any change of address by filing a separate paper captioned "Notice
17 of Change of Address." He must comply with the Court's orders in a timely fashion.
18 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
19 to Federal Rule of Civil Procedure 41(b).

20 IT IS SO ORDERED.

21 DATED: May 7, 2008



JEFFREY S. WHITE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

EDWARD KENNEDY,

Case Number: CV08-01090 JSW

Plaintiff,

CERTIFICATE OF SERVICE

V.

BEN CURRY et al.

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 7, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Edward Kennedy
CDC D30780
Correctional Training Facility
P.O. Box 689
Soledad, CA 93960

Dated: May 7, 2008

Jennifer Ottolini
Richard W. Wiking, Clerk
By: Jennifer Ottolini, Deputy Clerk